

Article - Natural Resources

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§5–103.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Construction activity” means work by a constructing agency related to:
 - (i) Construction of or improvements to a highway; or
 - (ii) Off-site environmental mitigation related to highway construction.
- (3) “Constructing agency” means:
 - (i) A unit of State or local government; or
 - (ii) Any other person who uses State funding and performs any construction activity with the State funding.
- (4) (i) “Forest” means a biological community dominated by trees or other woody plants covering a land area of 1 acre or more.
 - (ii) “Forest” includes an area that has been cut but not cleared of trees or other woody plants.
- (5) “Forest mitigation banking” means the intentional restoration or creation of forests undertaken expressly for the purpose of providing credits for reforestation requirements with enhanced environmental benefits from future activities.
- (6) “Watershed” means all lands lying within an area described as a subbasin in water quality regulations adopted by the Department of the Environment.
- (b) To accomplish a construction activity involving land clearing, a unit of State or local government or any other person using State funding for the construction project:
 - (1) May cut or clear only the minimum number of trees and other woody plants that are necessary and consistent with sound design practices; and

(2) Shall make every reasonable effort to minimize the cutting or clearing of trees and other woody plants.

(c) (1) If the total area of forest cut or cleared in connection with a construction activity by a unit of State or local government or any other person using State funding for the construction project equals 1 acre or more, the constructing agency shall locate an equivalent area of State-owned or other publicly owned land to be reforested by the Department at a rate of 10 cents per square foot of the area of required planting.

(2) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph, the reforestation projects shall be established on any public land within the county and watershed in which construction activity by a unit of State or local government has caused a loss of trees where the public entity that owns the land agrees to that use of the land.

(ii) If the reforestation project cannot be reasonably accomplished in the county and watershed in which the construction activity is located, then the reforestation shall occur in the county or watershed in the State in which the construction activity is located, or shall be accomplished by use of credits in a forest mitigation bank in the county and watershed in which the construction activity is located.

(iii) If the reforestation project cannot be reasonably accomplished in the county or watershed in which the construction activity is located, or by use of credits in the county and watershed in which the construction activity is located, then reforestation may occur by the use of credits in a forest mitigation bank in the county or watershed in which the construction activity is located.

(3) The constructing agency shall reimburse the Department for the reforestation activities at an appropriate rate of 10 cents per square foot of the area of required planting.

(4) Any land for a reforestation project shall be:

(i) If possible, on the site or in the project right-of-way being used for the construction activity;

(ii) If sufficient area is not available at the site or within the project right-of-way, on State-owned or other publicly owned land in the county and watershed in which the construction activity is located;

(iii) If the reforestation project cannot be reasonably accomplished in the county and watershed in which the construction activity is located, on State-owned or other publicly owned land in the county or watershed in the State in which the construction activity is located; or

(iv) If the reforestation project cannot be reasonably accomplished on State-owned or other publicly owned land in the county or watershed in the State in which the construction activity is located, accomplished through use of forest mitigation bank credits in the watershed in which the construction activity is located.

(d) If the constructing agency is unable to locate a sufficient amount of State or other publicly owned land or available forest mitigation bank credits to comply with the requirements of subsection (c) of this section, the constructing agency shall contribute money, at the rate of 10 cents per square foot of the area of required planting, to the Reforestation Fund established under subsection (e) of this section.

(e) (1) In this subsection, “Fund” means the Reforestation Fund.

(2) There is a Reforestation Fund in the Department.

(3) The purpose of the Fund is to:

(i) Finance the planting of trees on:

1. Land located in the county and watershed in which construction projects giving rise to Fund contributions are located; and

2. Private property on which trees were destroyed by a treatment to destroy plant pests that was applied by the Department of Agriculture; and

(ii) Finance the prevention of and response to forest health emergencies.

(4) The Department shall administer the Fund.

(5) (i) The Fund is a special, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(ii) The Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(6) The Fund consists of any money received from contributions by a constructing agency under subsection (d) of this section.

(7) (i) Subject to subparagraph (ii) of this paragraph, the Fund may be used only to:

1. Plant trees on land located in the county and watershed in which construction projects giving rise to Fund contributions are located;

2. If reforestation cannot be reasonably accomplished in the county and watershed in which the construction activity is located:

A. Plant trees on State or other publicly owned lands located in the county or in the watershed in the State in which the construction activity is located; or

B. Purchase credits in, establish, or maintain a forest mitigation bank in the county or watershed in which the construction activity is located in accordance with Department regulations;

3. Replace trees, except nursery stock that has not been replanted, that were destroyed by the application of a treatment applied to destroy plant pests under a quarantine imposed by the Secretary of Agriculture, whether or not the quarantine is in effect in the county or watershed where the construction activity occurred; or

4. Finance the prevention of and response to forest health emergencies by:

A. Maintaining the health and vitality of forest land and urban tree canopy; and

B. Preventing or controlling significant forest land and urban tree canopy degradation caused by acts of nature.

(ii) 1. Except as provided in subsubparagraph 2 of this subparagraph, money in the Fund may be used for administrative costs calculated in accordance with § 1-103(b)(2) of this article.

2. The Fund may not be used to finance administrative activities associated with a mitigation bank.

3. Any credits created by the Fund may not be sold to compensate for additional forest impacts.

(iii) 1. The Department shall accomplish the reforestation for which money is deposited in the Fund within 2 years or three growing seasons after project completion, as appropriate.

2. Money deposited in the Fund under subsection (d) of this section shall remain in the Fund for a period of 2 years or three growing seasons, and at the end of that time period, any portion that is not used to meet the reforestation requirements shall be returned to the constructing agency.

(8) (i) The Treasurer shall invest the money of the Fund in the same manner as other State money may be invested.

(ii) Any investment earnings of the Fund shall be credited to the General Fund of the State.

(9) Expenditures from the Fund may be made only in accordance with the State budget.

(f) (1) Any unit of State or local government that engages in construction activities involving land clearing on forest lands shall consult with the Department to assure compliance with this section:

(i) Before cutting in or clearing a forest; and

(ii) Before locating a reforestation area in accordance with this section.

(2) The provisions of this subsection shall also apply to any construction activity by any other person who uses State funding for that activity.

(g) The provisions of this section do not apply to any agricultural practice implemented under a soil and water conservation plan.

(h) On or before September 30 of each year, the Department or local authority shall submit to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee a report on:

(1) The number and location of each construction activity subject to the requirements of this section;

(2) The amount and location of acres cleared, conserved, and planted in connection with the activity; and

(3) The amount of reforestation fees collected and expended.

(i) Forest mitigation banking under this section shall be conducted in accordance with standards adopted under Subtitle 16 of this title.

(j) The Department may adopt regulations to implement this section.

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